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JOURNAL OF THE AMERICAN JUDICATURE SOCIETY

Vol. 29, No. 5 GLENN R. WINTERS, Editor February, 1946

Every State Should Keep Judicial Statistics

THE FIRST ARTICLE in the first issue of the JOURNAL, twenty-nine years ago, contained the following paragraph:

"One of the worst features of the present situation is that we have no authoritative body of facts concerning the administrative side of the judicial function. On the essential juristic side our intense interest in case law has resulted in the most thorough system of reports ever known to any system of law. But with respect to the business of justice we have no statistical system. Ours is the only modern nation without data concerning the work of its courts. It would be difficult to exaggerate the extent of our loss in this respect. Precise criticism is impossible, but vague and sketchy accusations are encouraged. It prevents agreement as to the causes for alleged defects. It prevents a common understanding and acceptance among judges of their responsibility. It leaves us without data greatly needed for social, criminal and procedural legislation."

Some progress has been made since then in keeping statistics on the work of the courts. Accurate figures on the work of the federal courts are compiled by the Administrative Office in Washington, and the 1942 Handbook of the National Conference of Judicial Councils listed a half-dozen state judicial councils which mentioned keeping statistics as part of their regular functions. Probably a few more are doing it now.

The man who does not keep track of his personal finances not only lacks an important incentive to save money; he is definitely headed for financial difficulties if not already in them. The state that allows its courts to muddle along from year to year without knowing just how their business is being handled or how much work the judges are doing lacks a major incentive to organize those courts on a businesslike basis, and is probably doing a poor job of administering justice to its citizens.

The judicial council is the logical agency to perform this service. Any legislature should be glad to provide funds and such sanctions as are necessary to assure cooperation on the part of the court clerks. If the judicial council cannot do it, the supreme court or the attorney-general's department might undertake it. To the extent that the differing judicial systems permit it, statistics should be standardized to permit comparisons between states. The fact that such figures are not universally kept is even more amazing today than it was in 1917.

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George E. Brand Is Elected President of Judicature Society

George E. Brand, Detroit lawyer and chairman of the board of the American Judicature Society, was elected president of the Society at its annual meeting in Cincinnati, December 18, 1945, succeeding Judge Merrill E. Otis, who died in December, 1944, only three months after his election to that office at the previous annual meeting.

Dean Albert J. Harno of the University of Illinois college of law, a vice-president, succeeded Mr. Brand as chairman of the board, and Judge Frank C. Haymond of the Supreme Court of Appeals of West Virginia, a member of the board of directors, succeeded Dean Harno as vice-president. Glenn R. Winters, assistant secretary-treasurer of the Society and editor of the JOURNAL, was elected secretary-treasurer succeeding Herbert Harley, the Society's founder and secretary-treasurer for thirty-two years, who remains as adviser and consultant. The complete list of officers and directors elected at the meeting is shown on page 130.

The new president has been a leader in bar activities for many years. A native of Michigan and a graduate of the University of Michigan law school, he has practiced law in Detroit since 1912, and has served as president of the Detroit Bar Association and the Michigan State Bar. In the American Bar Association he has been a member of the House of Delegates since it was founded, and has served on the Committee on Unauthorized Practice of the Law and the Special Committee on Law Lists, as well as the Committee on Professional Ethics and Grievances, of which he is now a member. He is author of the standard reference book, *Unauthorized Practice Decisions*. He has been a director of the American Judicature Society since 1940, chairman of the board since 1942, and acting president since the death of President Otis a year ago.

Dean Harno has been head of the University of Illinois college of law since 1922, and has been president of the Illinois State Bar Association, chairman of the Section of Legal Education and Admission to the Bar of the American Bar Association, and president of the Association of American Law Schools. Judge Haymond has long been active in state and national bar affairs, and is a member of the Board of Governors of the American Bar Association.

The new secretary-treasurer is a graduate of the University of Michigan law school and a member of the Missouri bar. He is a member of the American Bar Association House of Delegates, and during the past year served on the Special Committee on Judical Selection and Tenure and on the Committee on Improvement of Criminal Procedure of the Section of Judicial Administration. He has been assistant secretary-treasurer of the American Judicature Society since 1940, was acting editor of the JOURNAL from 1942 to 1944, and has been its editor since September, 1944.

An overflow crowd of members and guests attended the annual meeting luncheon, at which the Honorable John W. Bricker, former governor of Ohio, was the speaker. An account of Governor Bricker's remarks will appear in a later issue of the JOURNAL.

Drafting the Proposed Federal Administrative Procedure Act

WILLIS SMITH

"How to assure public information, how to provide for rule-making where no formal hearing is provided, how to assure fairness in adjudications, how to confer various incidental procedural rights, how to limit sanctions, how to state all the essentials of a right to judicial review, and how to make examiners independent—these were the main questions."

DURING THE LAST THREE MONTHS of 1945 there took place a remarkable series of events in connection with the proposed statute regulating federal administrative procedure and conferring powers of court review. On October 19, 1945, the Attorney General of the United States issued a strong statement in support of it. On the following November 19 the Committee on the Judiciary of the United States Senate unanimously and favorably reported it (S. 7, Report No. 752). On December 10 it was introduced in the House of Representatives as H. R. 4941 in the form reported by the Senate committee. On December 18 and 19, at the 68th annual meeting of the American Bar Association, Chairman Hatton W. Sumners of the Committee on the Judiciary of the House of Representatives made a favorable statement on it, Attorney General Tom C. Clark gave a full address on the subject, and resolutions in favor of it were adopted.

In these days, when so much legislation is done piecemeal and the demands of special interests hold the center of the stage, the legislative proposal which has met with such general acceptance is even more notable because it deals broadly with the problem of administration and is a measure for good government. It deals with procedure, not privileges, and provides a general method of assuring that government will operate according to law. A bill of that character in these days required a background of preparation to achieve such acceptance.

The proposed statute involves almost all administrative operations. It deals with the very important problem of the relation of courts to administrative agencies. It is obviously not such a statute as may easily be drawn and simply submitted to the usual legislative routine. The method of procedure adopted by the Senate Judiciary Committee, under the chairmanship of Senator Pat McCarran of Nevada, recognized the nature of the task. That method is not only important for this bill but opens possibilities for the future.

The author is a member of the Raleigh, N. C., bar, and president of the American Bar Association.

LEGISLATIVE HISTORY

For more than 10 years Congress has considered proposals for general statutes respecting administrative law and procedure. Ten or more important bills have been introduced in Congress, and most of them have received widespread consideration.

In 1937 the President's Committee on Administrative Management recommended the complete separation of investigative-prosecuting functions and personnel from deciding functions and personnel in administrative agencies, but the significance of its report was lost in the turmoil of other issues. In 1938 the Senate Committee on the Judiciary held hearings on a proposal for the creation of an administrative court. In 1939 the Walter-Logan administrative procedure bill was favorably reported to the Senate. In 1940 it was passed by the Congress but vetoed by the President in part on the ground that action should await the then imminent final report by a committee appointed in the executive branch. Early in 1941 that committee, popularly known as the Attorney General's Committee on Administrative Procedure, made its extensive report.

Growing out of the work of the Attorney General's Committee on Administrative Procedure, several bills were introduced in 1941. Senate hearings were held on these bills during April, May, June, and July of that year. All interested administrative agencies were heard

at length and the proposals then pending involved the basic issues.

Further consideration was postponed for three war years. Bills were again introduced in June 1944 and reintroduced with revisions in 1945. The Committee on the Judiciary of the House of Representatives held hearings in June 1945, but it seemed clear that the real problems were detailed and technical. It had come to be widely accepted that such legislation should be "functional" in the sense that it should apply to kinds of operations rather than to forms of agencies. Accordingly, the proposed statute dealt primarily with the legislative and judicial functions of administrative agencies. Within each of those functions, however, it was necessary to define procedures and except subjects which were either not regulatory in character or were soundly committed to executive discretion.

TECHNICAL REVISIONS

Anticipating that this would be the situation, the chairmen of the Judiciary Committees of the Senate and House of Representatives had requested administrative agencies to submit their views and suggestions in writing. The Attorney General was requested to act as a liaison officer between the legislative committee and the several administrative agencies. Representatives of the staff of the Senate committee, with the aid of the representatives of the Attorney General and other interested parties, engaged in an extensive series of conferences at which points made were discussed and alternative proposals as to language were debated. Then, in May, 1945, the Senate committee issued a "committee print" in which the text of S. 7 appeared in one column and a tentatively revised text in the parallel column.

The revised text so proposed was then again submitted to administrative agencies and other interested parties for their written or oral comments, which were analyzed by the committee's staff and a further committee print was issued in June 1945. In four parallel columns it set forth (1) the text of the bill as introduced, (2) the text of the tentatively revised bill previously published, (3) a general explanation of provisions with references to the report of the Attorney General's Committee on Administrative Procedure and other authorities, and (4) a summary of views and suggestions received.

About this time Tom C. Clark became Attorney General and added new representatives to the conference group. Senator McCarran, chairman of the Senate Committee on the Judiciary, asked that they screen and correlate any further agency views. After this had been done and representatives of private organizations had submitted their additional views, the bill as further revised was made a committee print under date of October 5, 1945.

This final draft was submitted to the Attorney General for his formal perusal. He not only reported that the proposal was not objectionable but recommended its enactment in a strong statement on October 19, 1945. A month later the Senate committee reported the measure. Its report of thirty-one pages plus appendix reflects the long and painstaking consideration given the bill. The process of that consideration was not only well adapted to the technical nature of the job at hand but it was truly democratic, for private as well as governmental representatives were given every opportunity to submit their views and suggestions.

PARTICIPATION OF LEGAL PROFESSION

The organized bar had the same opportunities for presentation of views and suggestions. Bar associations had adopted resolutions and had presented reports to the Congressional committees. The American Bar Association's Special Committee on Administrative Law took an active part, culminating in a full day's meeting of the thirteen-man committee at Washington on October 2. The Committee unanimously approved the final draft of the bill and certified its position to the chairmen of the Congressional committees.

Contrary to the impression which some people seem to have, the proposed Administrative Procedure Act is not a compromise. The problem was not "how much" but "how." How to assure public information, how to provide for rule making where no formal hearing is provided, how to assure fairness in adjudications, how to confer various incidental procedural rights, how to limit sanctions, how to state all the essentials of a right to judicial review, and how to make examiners independent — these were the main questions.

There were two reasons why the legal profession could not engage in trading for advan-

tage in the details. First, if the statute should prove unworkable, it might prejudice procedural legislation for all time. Secondly, onerous requirements (such as those respecting evidence) might aid one private interest in one case (*e.g.* where prohibitory orders are issued) but would harm them in another (*e.g.* where a license is sought). Mainly, however, it was a simple matter of good citizenship and good statesmanship to seed the best and fairest provisions for each subject.

CONCLUSION

The draft of bill as reported by the Senate Committee on the Judiciary offers a means of securing and maintaining a government according to law. Its workability has been tested by the elaborate procedure discussed above. Its utility has been approved by the representatives of most of the legal profession. Its desirability is admitted by public officers of the highest rank. The necessity for it has been attested by the responsible members of the national legislature. If it is adopted, as it should speedily be, the result will be due to the background of study and care with which its terms have been drafted and tested.

Interstate Commerce in Damage Suits

GLENN R. WINTERS

> "The functioning of this backward system of dealing with industrial accidents in interstate commerce burdens it with perhaps two dollars of judgment for every dollar that actually reaches those who have been damaged, and it leaves the burden of many injuries to be borne by them utterly uncompensated."—*Justice Robert H. Jackson*

MR. FORBES B. HENDERSON, writing in a recent issue of the *Detroit Bar Quarterly*,[1] complains of the number of personal injury and death claims, particularly against railroads, arising in Michigan but tried and settled in Chicago. He suggests that this custom not only deprives Michigan lawyers of practice rightfully theirs, but burdens the administration of justice by requiring the transportation of parties, witnesses and evidence to a distant city for trial when perfectly competent courts and counsel are available where the parties live and the accident occurred.

Examination of some of the cases cited by Mr. Henderson reveals that this unwholesome practice extends far beyond Michigan and Chicago. *Union Pacific R. Co. v. Utterback*[2] is an example from the Pacific Coast. This case grew out of an accident resulting from the derailment of a locomotive in the Union Pacific yards at Portland, Oregon. The accident occurred in Portland, all the parties lived in Portland, and all witnesses for both sides except one railroad executive lived in or near Portland, yet suit was filed in the Superior Court of Los Angeles, 1,150 miles away. The railroad was strained to its capacity in the transportation of war traffic, and the defense of this suit in Los Angeles required the absence from their work of a number of essential railroad workers for a week or more instead of one day each as would have been possible had it been tried in a Portland court. The railroad petitioned a Portland court to enjoin the prosecution of the California action for the reasons mentioned. The petition was granted by the trial court but denied by the Oregon Supreme Court, and the background and implications of this case and decision are worthy of study.

WIDE VENUE PROVIDED

It must first be noted that actions for damages for personal injuries to employees of interstate railroads are tried under neither the common law nor a workmen's compensation statute, but under the Federal Employers' Liability Act.[3] Section 6 of the Act contains the innocent-appearing provisions that venue may be had at the residence of the defendant, where the accident occurred, or wherever the defendant is doing business at the time of commencing the action. Fearful of overloading the federal

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1. "The 'Exportation' of Personal Injury and Death Claims," 13 *Detroit Bar Quarterly* 11 (1945).
2. 173 Oregon 572, 146 P. (2nd) 76 (1944).
3. 45 U.S.C.A., Secs. 51-60.

courts, Congress gave concurrent jurisdiction to state courts and forbade removals.

These provisions have made it possible for a plaintiff to sue a large defendant in almost any court of his choosing in as many as a dozen states. Five years ago a case localized from every standpoint in Memphis, Tennessee, was taken to St. Louis for trial, and the United States Supreme Court held, as Mr. Justice Jackson put it, that the effect of the Act's venue provisions is to permit a plaintiff to "go shopping for a judge or jury believed to be more favorable than he would find in his home forum."[4]

During the first World War a general order was issued by the Director General of Railroads requiring, for the sake of easing the burden on war-busy railroads, that suits against carriers under federal control be filed where the plaintiff resided or where the cause of action arose.[5] Nothing of the kind was promulgated during the recent war, although the need was greater, and in absence of any such order the Supreme Court of Oregon felt, not without justification, that a court of one state ought not to "enjoin the continuance of litigation pending in the court of another state where venue is expressly given to the latter by act of Congress."[6]

The reasons why plaintiffs will impose on both adversary and themselves the inconvenience of trying a lawsuit hundreds or thousands of miles away are hinted at in Mr. Justice Jackson's comment. They do it in the hope of getting more money, and for several reasons. In the first place, differences in price levels and standards of living have their effect on jury verdicts. A jury in a country town where houses rent for $25 a month and restaurant meals cost 50 cents will appraise damages or anything else in more modest terms than a jury in a city where apartments rent for $100 a month and it costs a few dollars to dine out. Juries in certain cities have acquired a reputation for generosity in verdicts.

Factors such as these may fairly be taken into consideration by any honest man, balancing against them, of course, the extra expense and inconvenience of the distant proceedings for plaintiff as well as defendant. They are hardly sufficient to account for all of the "importation" of litigation that is going on. That the distant forum places the defendant at an unfair disadvantage as a rule is apparent from the following paragraphs taken from the complaint in equity in *Union Pacific R. Co. v. Thatcher*, a companion case to *Union Pacific R. Co. v. Utterback*,[7] previously cited:

"Said practice deprives the defendant railroad of all reasonable opportunity to defend itself on the factual issues in such cases because of its inability, except at grossly excessive cost and with serious interference with its transportation operations, to obtain the attendance of witnesses whose oral testimony is essential to an adequate and understandable presentation of the facts on which such claims are based. In all such cases, liability of the defendant carrier depends upon whether it was or was not negligent in certain of its railroad operations; and ordinarily such operations cannot be made intelligible to the average juror except by oral explanation (and frequently with the aid of maps, models or other exhibits) by those who actually operate or work about the particular instrumentalities involved. Usually such explanations cannot be made adequately or understandably by witnesses testifying by deposition only; and because of the inability of jurors to determine intelligently the credibility of such unseen witnesses, or the probative value of their testimony, such evidence is disregarded or given scant consideration even though it would have been given full weight had it been presented orally in the presence of the jury.

"As witnesses who reside in one state cannot be compelled to testify in the courts of another state, their attendance can be obtained only by meeting their own terms of compensation and expense allowances; and the cost of procuring their personal attendance in a foreign state may be and frequently is excessive, burdensome and out of all proportion to the actual value of the claim in litigation.

"Said practice prevents a view by the jury of the premises, facilities or instrumentalities involved, and thereby encourages and facilitates confusion, distortion and misrepresentation of the pertinent physical facts. Such confusion operates to the advantage of a plaintiff asserting a claim of doubtful merit.

"Such practice enables the claimant in such a case to take the defendant by surprise by offering testimony and making factual contentions which such defendant may have no reason to anticipate and which it cannot meet because of its inability to obtain witnesses on short notice

4. *Miles v. Illinois Central Co.*, 315 U.S. 698 (1941).

5. General Order No. 18, sustained, *Alabama and Vicksburg R. Co. v. Journey*, 257 U.S. 111 (1921).

6. *Union Pacific R. Co. v. Utterback, supra*, p. 585.

7. Note 2, *supra;* certiorari denied, 65 S. Ct. 36 (1944).

and from far distant places during the course of the trial.

"Because of the inability of the defending railroads to defend themselves against such foreign suits, the said scheme of said [attorneys] enables claimants to obtain findings of liability against the defendant carrier in cases wherein no such liability existed in fact, and to obtain grossly excessive awards of damages in cases wherein no substantial damage was actually sustained by the claimant.

"Such practice enables the claimants to exact from such railroads grossly excessive amounts in settlement of false or exaggerated claims because of the desire of such railroads to avoid the burdensome cost, interruption of business and unsatisfactory results of litigating such claims in a foreign jurisdiction under the circumstances above described."

THE TRAFFIC IN LAWSUITS

A few figures may not be amiss at this point to indicate the proportions to which this problem has grown. Of 214 cases under the Federal Employers' Liability Act pending in Chicago on August 15, 1945, 168 were from outside of Cook County, the normal territorial jurisdiction of the Chicago courts. Only 81 were from the state of Illinois. Of the remainder, 47 were from Indiana, 37 from Michigan, 16 from Ohio, 8 from Texas, 7 from California, and 18 from various other states.[8] On January 10, 1946, The Atchison, Topeka and Santa Fe Railway Company had pending against it in the Superior Court of Chicago a total of 26 cases filed by a single Chicago lawyer in which a total of $1,265,000.00 damages was asked. Of these cases, the cause of action in fifteen of them arose in California, eight in Arizona, and three in New Mexico. Not one of the 26 cases handled by this lawyer arose in Illinois or in any other state in which this particular carrier operates other than in the three western states mentioned, and all, except one case, were brought under the Federal Employer's Liability Act or Safety Appliance Acts. The average distance from the place of occurrence to Chicago is 1888.3 miles, or a total of 49,096 miles in the 26 cases. All 26 cases were filed since September 18, 1945. On September 20, 1945, the claim department of the Illinois Central System reported 164 personal injury suits under the Federal Employers' Liability Act "imported" from outside jurisdictions and pending in the Chicago courts. The Grand Trunk Western, according to the *Detroit Bar Quarterly* article previously quoted,[9] had 21 such cases arise in Michigan during 1944, all of which were defended in Chicago and none in Michigan. This is as far as we will go with Chicago statistics, but a letter to the claim department of any other railroad operating out of Chicago will bring a similar story in response. The picture is similar, although not quite so bad, in Los Angeles, and the same holds true for various other large cities around the country.

WHY DO PLAINTIFFS DO IT?

How did all these individual plaintiffs, most of whom had never been in court before, know about the advantages of suing in these metropolitan centers? Small-town people don't rush off to big city lawyers with their land title and probate litigation; they drop in at Lawyer Jim's office across from the court house and talk over their case between cigar puffs; or they stroll over to his house on a hot evening and bring the subject up while he sprinkles his lawn. Not one in a thousand of these cases would be "exported" to a distant city if they were placed in the hands of the hometown lawyers. Honest lawyers do not ask more than reasonable justice for their clients, and as a rule they expect to get that in their home courts. The exigencies of their practice would not permit them to pack up and journey a thousand miles to file suit in a distant court, and most of them when that is necessary enlist the services of local counsel in the distant city to assist them. The glaring fact is that the great bulk of this comparatively profitable practice never gets into the hands of local lawyers, but is referred to the distant lawyers from the start.

It is true that many small town lawyers are unfamiliar with the Federal Employers' Liability Act and certain related statutes, and would not be as well equipped to handle cases arising under them as specialists who do nothing else, but the way this business is going there is no incentive for an ordinary lawyer to acquire the necessary familiarity with it. It is preposterous to suppose that if a type of practice capable of yielding the fees that these cases yield were fairly disseminated among the members of the bar, local lawyers would not be found who would

8. These figures were compiled from the claim departments of the various Chicago railroads by one of the claim agents.

9. Note 1, *supra*.

be glad to make the necessary preparation to give it adequate handling.

If it were merely a case of city lawyers against country lawyers it would be bad enough, but the records show that the Chicago bar is just about as effectually excluded from the handling of employee injury cases as is the bar of Albuquerque. Of the 214 cases pending in Chicago last August 15, more than half were in the hands of four law firms, one of which represented no less than 65 plaintiffs (from a number of states), the second 28, the third 15 and the fourth 12.

An indication of how the Chicago bar looks at the situation may be found in the following comment in the *Chicago Bar Record:*

"From the standpoint of the Chicago bar, the acquiring of a reputation for the solicitation of cases puts the members of our profession here, good and bad, in a very unfavorable light with outside members of the profession. That so many claims for personal injuries arising in other jurisdictions should be sued on in Chicago is cogent evidence of the existence of a system of solicitation of such cases. Certainly lawyers in other jurisdictions will not be convinced otherwise.

"It may be thought that the grave difficulties encountered in the prevention of local ambulance chasing are multiplied in the case of solicitation by Chicago lawyers out of the state, but the price of making no effort to stop or punish such out-of-state solicitation is the forfeiting of the respect of lawyers who month after month witness the unhindered operation of a system which brings to Chicago injury cases that normally, in the absence of solicitation, would be filed in other jurisdictions."[10]

THE "LEGAL AID DEPARTMENT"

A great many of these cases, although not all of them by any means, are traceable to the activities of the so-called "legal aid departments" of certain of the railroad employee labor unions, or brotherhoods[11] These departments, established chiefly for the purpose of assisting their members in prosecuting their claims for personal injuries, have selected certain lawyers and law firms in various cities and designated them "regional counsel." Their names are kept before the members in one way or another, and they get most of the members' business. This is not entirely by coincidence. As soon as possible after an accident occurs, an investigator carrying a brotherhood memberhip card interviews the injured man, advises him what his claim should be worth, and informs him of the legal services the brotherhood has made available to him. This is sufficient in many instances to forestall a settlement and to secure the case for the regional counsel. In recognition of the volume of business thus obtained, the contingent fee percentage in the brotherhood contract is somewhat lower than the market. An arrangement between regional counsel and the brotherhood whereby a percentage of all fees was paid over by counsel into the latter's treasury has been mentioned in at least two reported cases, in one of which it was condoned, and in the other severely condemned.[12]

WHAT IS IN STORE FOR THE BAR?

Although it is strenuously denied that either compulsion or persuasion is used by the legal aid department with respect to choice of counsel, it is nevertheless obvious that the activities of the investigators serve the same purpose as solicitation on behalf of the regional counsel, and that the regional counsel idea itself is an ominous development in the practice of law. If such an institution is to be given the stamp of approval of the bar and the courts, then what is in store for the bar generally? Why should not a local union of painters and paperhangers appoint counsel to handle all legal affairs for its members? Why should not a church select regional counsel for its members on a nationwide basis? In fact, why may not any association, whether it be fraternal, religious, labor, civic or otherwise, make a deal with one or more lawyers for this type of representation? Why should not all of these groups employ investigators and solicitors to funnel the general legal business of their members into the hands of certain lawyers, with the understanding that a percentage of the lawyers' income therefrom will be set aside for the treasury of the organization?

The answer to these questions must be obvious to any open-minded person, and indeed

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10. Editorial, "Interstate Commerce," 26 *Chicago Bar Record* 181-2, February, 1945.

11. A survey begun in January, 1946, and not yet completed at this writing, among the leading railroads of the country, showed at the last count 477 cases in the hands of regional counsel for one large brotherhood, and 343 in the hands of lawyers and law firms having a reputation for solicitation of cases.

12. *Ryan v. Pennsylvania R. Co.*, 268 Ill. App. 364 (1932); *In re O'Neill*, 5 F. Supp. 465 (1934).

it has been written in unmistakable words right in Canon 35 of the Canons of Professional Ethics of the American Bar Association:

"A lawyer may accept employment from any organization such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs."[13]

INJUNCTION AGAINST FOREIGN ACTION

Enough has been said to demonstrate that we are considering no mere academic question of ethical niceties, but a major problem of concern not only to railroad employers and employees but to the courts, the bar and the public. In casting about for a solution, it must be recognized that no single or simple one is likely to be found. Certain attacks on the problem already have been made, however, and others are possible. To begin with, any expedient that would tend to keep this litigation within the state of origin would be most helpful. Perhaps the most direct way is that attempted in the *Utterback* case—to get a local court to forbid the plaintiff to prosecute his suit in the other state. The right of a state court to prevent unjust resort to the courts of another state is well established.[14] This doctrine was applied for some years to injunctions by the courts of one state against prosecution of Federal Employers' Liability Act cases in the courts of other states.[15]

In 1940 the Baltimore and Ohio Railroad Company tried to get an injunction in an Ohio court to restrain a claimant from bringing his suit in the United States District Court for the Eastern District of New York. The Supreme Court of Ohio acknowledged the prevailing rule with respect to actions filed in foreign state courts, but declined to extend it to federal cases.[16] On certiorari, the United States Supreme Court first affirmed by a four to four vote,[17] then granted a rehearing and affirmed again by five to three, Chief Justice Stone and Justices Frankfurter and Roberts dissenting.[18] A few months later, in *Miles v. Illinois Central R. Co.*,[19] the Supreme Court went a step farther and declined to permit a state court to enjoin on grounds of oppressiveness and inequity an action in another state court. Four justices dissented and Mr. Justice Jackson concurred with the uncomplimentary words quoted earlier in this article. The A. L. R. annotation commented:

"There would seem to be little scope left for injunctions against suits under the Federal Employers' Liability Act, except possibly on the ground of unreasonable burdens upon interstate commerce in exceptional cases."[20]

That was the angle emphasized in the *Utterback* and *Thatcher* cases,[21] and denial of certiorari by the United States Supreme Court in those cases[22] just about ends all possibility of injunctive relief.

AMENDING THE VENUE SECTION

An amendment to Section 6 of the Federal Employers' Liability Act along the lines of the emergency order of 1918,[23] limiting venue to where the plaintiff lives or where the cause of action arose, would be a fairly complete solution to the problem. It should be remarked in this connection that the present venue provisions were carefully drafted and inserted for a definite purpose. The original law did not mention venue. Under the ordinary rules, some courts had held that the defendant must be sued in its state of residence, or incorporation, even though that state was Kansas, while the plaintiff lived and the accident happened in Texas.[24] It was for the very purpose of avoiding and not encouraging litigation at a distance that the amendment was written; and that the present abuse of Section 6 was not anticipated by its proponents may be clearly seen from the record of the discussions on the floor of the Senate at the time of the adoption of the amendment.[25] Venue at the residence of the plain-

13. 62 A.B.A. Rep. 1118 (1937).
14. *Dehon v. Foster*, 4 Allen (Mass.) 545 (1862); *Cole v. Cunningham*, 133 U.S. 107, 10 S. Ct. 269, 35 L. Ed. 538 (1890), 21 L.R.A. 71, 25 L.R.A. (N.S) 267,
15. *State ex. rel. N.Y.C. & St. L. R. Co. v. Nortoni*, 331 Mo. 764, 55 S.W. (2d) 272, 85 A.L.R. 1345 (1932); *McConnell v. Thompson*, 213 Ind. 16, 8 N.E. (2d) 986, 11 N.E. (2d) 183, 113 A.L.R. 1429 (1937).
16. *Baltimore and Ohio R. Co. v. Kepner*, 137 Ohio St. 409, 30 N. E. (2d) 982 (1940).
17. *Id.*, 313 U.S. 542, 85 L. Ed. 1510, 61 S. Ct. 841 (1941).
18. *Id.*, 314 U.S. 44, 62 S. Ct. 6, 136 A.L.R. 1222 (1941).
19. 315 U.S. 698, 146 A.L.R. 1104 (1942).
20. 146 A.L.R. 1104, 1118 (1942).
21. 173 Oregon 572, 146 P. (2d) 76 (1944).
22. 65 S. Ct. 36 (1944).
23. Note 5, *supra*.
24. *Cound v. A. T. & S. F. R. Co.*, 173 F. 527 (1909).
25. 45 Cong. Rec. 4034, quoted in 314 U.S. 44, 59, n. 2.

tiff or where the cause of action arose should be entirely adequate to avoid the inconveniences to plaintiffs that prompted the revision of Section 6, since railroad employee injuries naturally occur on the railroad, and service of process on a railroad corporation is not difficult wherever its lines run.[26]

POSSIBILITIES IN STATE STATUTES

The further possibility of relief through enactment of state statutes remains to be considered. At best, this could be only partial relief, for no state statute could deprive the federal courts of a jurisdiction granted them by act of Congress.[27] In the state where the litigation is going on, Illinois, for example, this would have to be some kind of law to keep "imported" cases out of Illinois courts. Here we immediately encounter the privileges and immunities clause of the United States constitution.[28] That instrument jealously guards the right of Michigan, Texas and California citizens to sue in Illinois courts, and the right is well worth preserving. Any statute that subjected the citizens of other states to no greater burden than its own citizens, however, would get past that barrier.

It is interesting to note that since 1903 the Illinois wrongful death statute has provided that "no action shall be brought or prosecuted in this state to recover damages for a death occurring outside of the state." A 1935 amendment adds: "where a right of action exists under the laws of the place where such death occurred and service of process in such suit may be had upon the defendant in such place."[29] This statute was held in 1918 to deny jurisdiction to an Illinois court to hear a Federal Employers' Liability Act case arising out of a death in Missouri.[30] Another amendment adding the two words "or injury" after "death" would promptly empty Illinois courts of imported personal injury litigation. To comply with the privileges and immunities clause it would have to apply to all injury cases and to Illinois citizens as well as those of other states, and in that form it might meet with opposition from the bar and the public of that state, but there appears to be no objection to the existing restriction on death actions.

The maximum recovery established in many wrongful death statutes is another factor that is undoubtedly responsible for some out-of-state litigation. *American Jurisprudence* has this to say about it:

"The difficulty of measuring the damages sustained by the wrongful death of a person, and the possibility of extreme awards by juries, led to instances of legislative adoption, in the early wrongful death statutes, of a stipulated limit to the amount of damages recoverable in an action for wrongful death. This limit was sometimes placed at $5,000 and sometimes at $10,000. The validity of such statutory provisions has been upheld against attacks on their constitutionality. On the other hand, under a number of wrongful death statutes, particularly those more recently enacted or amended, there is no stipulated limit to the amount of damages which may be recovered for wrongful death. Indeed, constitutional inhibitions sometimes exist against any limitation of the amount so recoverable."[31]

Like most legislation setting fixed pecuniary limits, these statutes have not allowed for the changing value of money. It would take nearly $25,000 today to equal in purchasing power $10,000 fifty years ago.[32] As indicated in the foregoing quotation, the recent trend has been to liberalize the wrongful death statutes in this regard. Such a step undoubtedly would exert an influence toward keeping migrant litigation at home.

Two other state statutes are worthy of mention. In *Chambers v. Baltimore and Ohio R. Co.*[33] the United States Supreme Court upheld an Ohio statute limiting the right to sue in Ohio courts for damages for wrongful death occurring in another state to cases in which the decedent was a citizen of Ohio. This was justified on the tenuous ground that the right to sue

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26. Some employees are employed off the lines, e. g., for solicitation of traffic in other cities, but they cannot sue in such places anyway, under the doctrine of *Davis v. Farmers Co-op Co.*, 262 U.S. 312 (1923), which holds that such activities are not "doing business" to a sufficient extent to warrant service of process there.

27. *Stephenson v. Grand Trunk Western R. Co.*, 110 F. (2d) 401 (1940); *McKnett v. S.L.S.F. R. Co.*, 292 U.S. 230 (1933).

28. Article IV, Section 2. "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

29. Smith-Hurd Ill. Ann. Stats., Ch. 70, Sec. 2.

30. *Walton v. Pryor*, 276 Ill. 563, 115 N.E. 2, L.R.A. 1918E 914, error dism. 245 U.S. 675 (1918).

31. 16 Am. Jur. 123-4. Citations are given to numerous states in each category.

32. From a chart of the purchasing power of the dollar published in 1944 by Roy Wenzlick and Co., St. Louis.

33. 207 U.S. 142 (1908).

depended on the citizenship not of the plaintiff but of the decedent. In *Douglas v. N. Y., N. H. & H. R. Co.*,[34] a New York statute which gave discretionary jurisdiction to suits by nonresidents but compulsory jurisdiction to suits by residents was held valid because it treated citizens and non-citizens alike and tested their right to maintain an action by their residence or non-residence. The Court has very recently taken the trouble to distinguish and impliedly reaffirm both of these decisions, as will presently be noted, and if this distinction between citizens and residents could really be taken at face value down the line, it could be used to frame a venue statute that would make a difference in the present interstate commerce in damage suits.

THE MILES CASE

The prospects of accomplishing anything with a state statute appear to hinge largely on the effect of a somewhat contradictory dictum in *Miles v. Illinois Central R. Co.*[35] The prevailing opinion, after ruling that injunctive relief may not be had, says:

"This is not to say that states cannot control their own courts. We do not deal here with the power of Missouri by judicial decision or legislative enactment to regulate the use of its courts generally, as was approved in the *Douglas* or *Chambers* cases."[36]

In the preceding paragraph of the same opinion, however, the following flat statement is made: "The Missouri court here involved must permit this litigation." This has been quoted for more than it is worth, not only because it was concurred in by only four of the nine justices even though it was part of the prevailing opinion, but also because the context makes clear that the "must" is subject to the court's regular jurisdiction. The very next sentence goes on to say: "To deny citizens from other states, suitors under F. E. L. A., access to its courts would, *if it permitted access to its own citizens*[37] violate the privileges and immunities clause." In the next sentence appears the statement: "The right to sue in state courts of proper venue *where their jurisdiction is adequate*[37] is of the same quality as the right to sue in federal courts."

This point is labored to emphasize that the Supreme Court's latest pronouncement leaves room for state legislatures to do what they can within constitutional limitations to rid their courts of imported damage suits, and that the two statutory ventures in that direction approved in the *Chambers* and *Douglas* cases are by inference reapproved.

IS STATE JURISDICTION MANDATORY?

This same language, incidentally, has lately been used to administer a virtual death blow to the doctrine that a state court might, upon a plea of *forum non conveniens*, a showing of burden on interstate commerce, or for other satisfactory reasons, exercise a discretionary power to decline a Federal Employers' Liability Act case from another state. Mr. Justice Holmes, speaking for the United States Supreme Court in the *Douglas* case, bluntly stated that:

"As to the grant of jurisdiction in the Employers' Liability Act, that statute does not purport to require state courts to entertain suits arising under it, but only to empower them to do so, so far as the authority of the United States is concerned."[38]

In the *Thatcher* and *Utterback* cases the railroad, in addition to petitioning for an injunction against the maintenance of the California actions, moved in the California court to abate the proceedings on grounds of *forum non conveniens*, burden on interstate commerce, and obstruction of the war effort. A good showing was made on all these points, but the Supreme Court of California declared emphatically that "whatever may have been the rule on the subject from time to time, it is now settled that the state court having jurisdiction may not refuse to exercise it." The court reprints lengthy passages from the *Miles* opinion, including the portions just quoted, and concludes that "the *Miles* case is completely decisive that the doctrine of *forum non conveniens* is no justification for a state court to refuse jurisdiction of an action under the Federal Employers' Liability Act. Likewise, it is conclusive that the state court *must* take jurisdiction."[39] Inasmuch as a majority of the court consisting of four dissenting justices and one concurring

34. 279 U.S. 377 (1928).
35. 315 U.S. 698 (1942).
36. *Ibid.*, p. 704.
37. Italics added.
38. 279 U.S. 377, 387 (1928).
39. 25 Calif. (2d) 605, 612-3 (1944), cert. denied, 65 S. Ct. 1403 (1945).

justice joined in repudiating the statement, which was not part of the decision, that the Missouri court must permit this litigation, the California court seems to have overrated it. Nevertheless, the United States Supreme Court on May 28, 1945, declined to review the California cases by certiorari, and there the matter stands.

A statute in the state where the cause of action originates, directed along different lines, offers some possibilities. A statute now in force in Michigan[40] makes it a misdemeanor for lawyers, directly or by agent, to solicit injured persons for the purpose of representing them in prosecuting personal injury claims. The 1945 Montana legislature passed a similar act, specifically directed against outsiders soliciting Montana cases for trial outside of Montana.[41] The experience of the Grand Trunk Western during 1944 when the Michigan statute was in force[42] leaves some doubt as to its practical effectiveness, but that depends largely upon what effort was made to use it. At least the weapon is there, and lawyers in other states where outsiders are coming in and taking away law practice that belongs there might like to have it at their disposal also.

CHANGE OF VENUE IN JUDGE'S DISCRETION

A patent case was recently tried before Judge Elwyn R. Shaw in the United States District Court for the Northern District of Illinois, Western Division, at Freeport, Illinois, all of the parties, witnesses and attorneys connected with which resided in Connecticut and New York.[43] Freeport just happened to be the most remote point at which service could be obtained, and in the opinion of the judge the filing of suit there was purely vexatious. With this and the railroad cases in mind, Judge Shaw has offered the interesting suggestion that federal district judges be given the power to order the transfer of a case to any other district court which in the opinion of the judge would better serve the ends of justice.[44] This is a logical and reasonable extension of the every-day practice of change of venue, and there is no reason to doubt that the judges would exercise the power with wisdom and discretion.

40. Sec. 28.642, Mich. Stats, Ann.
41. H.B. 215.
42. See the Henderson article, 13 *Detroit Bar Quarterly* 11 (1945).
43. *Friedman v. Washburn*, No. 82.

A MEDIEVAL SYSTEM OF COMPENSATION

The Supreme Court of California in the *Leet* case [45] rejects the notion that the court is burdening interstate commerce in accepting the case, and declares that if there is a burden it is imposed by Congress. Mr. Justice Jackson's words in the *Miles* case express the idea all too well:

"That such a privilege puts a burden on interstate commerce may well be admitted, but Congress has the power to burden. The Federal Employers' Liability Act itself leaves interstate commerce under the burden of a medieval system of compensating the injured railroad worker or his survivors. He is not given a remedy, but only a lawsuit. It is well understood that in most cases he will be unable to pursue that except by splitting his speculative prospects with a lawyer. The functioning of this backward system of dealing with industrial accidents in interstate commerce burdens it with perhaps two dollars of judgment for every dollar that actually reaches those who have been damaged, and it leaves the burden of many injuries to be borne by them utterly uncompensated."[46]

The reasons for the enactment of this unfortunate law were well stated in the dissenting opinion of Mr. Justice Brandeis in the leading case of *New York Central R. Co. v. Winfield:*[47]

"By the common law as administered in the several states, the employee, like every other member of the community, was expected to bear the risks necessarily attendant upon life and work; subject only to the right to be indemnified for any loss inflicted by wrongdoers. The employer, like every other member of the community, was in theory liable to all others for loss resulting from his wrongs; the scope of his liability for wrongs being amplified by the doctrine of *respondeat superior*. This legal liability, which in theory applied between employer and employee as well as between others, came, in course of time, to be seriously impaired in practice. The protection it provided employees seemed to wane as the need for it grew. Three defenses—the doctrines of fellow servant's negligence, of assumption of risk, and of contributory negligence—rose and flourished. When applied to huge organizations and hazardous occupations, as in railroading, they practically abolished the liability of employers to employees; and in so doing they worked great hardship and apparent injustice. The wrongs suffered were flagrant; the demand for redress insistent; and the efforts to secure remedial

44. Letter, September 14, 1945.
45. 155 P. (2d) 42 (1944).
46. 315 U.S. 698, 707 (1942).
47. 244 U.S. 147 (1916).

legislation widespread. But the opponents were alert, potent and securely entrenched. The evils of the fellow-servant rule as applied to railroads were recognized as early as 1856 when Georgia passed the first law abolishing the defense. Between the passage of that act and the passage of the first Federal Employers' Liability Act[48] fifty years elapsed. In those fifty years only four more states had abolished the defense of fellow servant's negligence. Furthermore, in only one state had a statute been passed making recovery possible where the employee had been guilty of contributory negligence. Meanwhile, the number of accidents to railroad employees had become appalling. In the year 1905-6 the number killed while on duty was 3,807, and the number injured 55,524. The promoters of remedial action, unable to overcome the efficient opposition presented in the legislatures of the several states, sought and secured the powerful support of the President. Congress was appealed to and used its power over interstate commerce to afford relief."[49]

Farther on in the same opinion, Mr. Justice Brandeis had the following to say about the Act itself:

"The Federal Employers' Liability Act was, in no respect, a departure from the individualistic basis of right and of liability. It was, on the contrary, an attempt to enforce truly and impartially the old conception of justice as between individuals. The common-law liabiliy for fault was to be restored by removing the abuses which prevented its full and just operation. The liability of the employer, under the federal act as at common law, is merely a penalty for wrong doing. The remedy assured to the employee is merely a more efficient means of making the wrongdoer indemnify him whom he has wronged."[50]

At the risk of unduly extending the length of the quotation, we add the same judge's remarks about the development of the principle of workmen's compensation:

"In the effort to remove abuses, a study had been made of facts, and of the world's experience in dealing with industrial accidents. That study uncovered as fiction many an assumption upon which American judges and lawyers had rested comfortably. The conviction became widespread, that our individualistic conception of rights and liability no longer furnished an adequate basis for dealing with accidents in industry. It was seen that no system of indemnity dependent upon fault on the employer's part could meet the situation: even if the law were perfected and its administration made exemplary. For in probably a majority of cases of injury there was no assignable fault; and in many more it must be impossible of proof. It was urged: Attention should be directed not to the employer's fault but to the employee's misfortune. Compensation should be general, not sporadic; certain, not conjectural; speedy, not delayed; definite as to amount and time of payment; and so distributed over long periods as to insure actual protection against lost or lessened earning capacity. To a system making such provision, and not to wasteful litigation, dependent for success upon the coincidence of fault and the ability to prove it, society, as well as the individual employee and his dependents, must look for adequate protection. Society needs such protection as much as the individual; because ultimately society must bear the burden, financial and otherwise, of the heavy losses which accidents entail. And since these accidents are in natural, and in part an inevitable, concomitant of industry as now practiced, society, which is served thereby, should in some way provide the protection. To attain this end, co-operative methods must be pursued; some form of insurance—that is, some form of taxation. Such was the contention which has generally prevailed. Thus out of the attempt to enforce individual justice grew the attempt to do social justice. But when Congress passed the Employers' Liability Act of April 22, 1908, these truths had gained little recognition in the United States. Not one of the thirty-seven states or territories which now have workmen's compensation laws had introduced the system."[51]

Many of the abuses of current F.E.L.A. litigation may be traced to the inappropriateness of the fault test for liability. Turn back and read again the Union Pacific statement[52] of the disadvantages to the defendant of the distant trial and notice how the negligence requirement colors every paragraph of it. In this case the railroad evidently thought there had been no negligence; thereupon, regardless of whatever sympathy the defendant may have felt for the claimant's plight, it had no choice but to deny all liability whatsoever. As a matter of fact, a settlement of $5,000 was offered in this case in spite of the defendant's contention of non-liability, and many such settlements have been made by railroads in clear non-liability cases in favor of claimants in need. That injured employees deserve help regardless of who was at fault undoubtedly is the opinion of many jurors and influences their verdicts. Judge James H. Pope of the Municipal Court of Los Angeles, questioning jury panels with hypothetical negligence questions, got frank admissions from

48. Act of June 11, 1906, 34 Stat. 232.
49. 244 U.S. 147, 159-62 (1916).
50. *Ibid.*, p. 164.
51. *Ibid.*, p. 164-5.
52. Page 136 *supra*.

many of them that regardless of the court's instructions they would in certain circumstances ignore contributory negligence and find for the plaintiff.[53]

WORKMEN'S COMPENSATION IS OVERDUE

What all this adds up to is the incontrovertible and crying fact that workmen's compensation for railroad employees is a half-century overdue. There were no state workmen's compensation laws in 1906, but the first one was enacted only five years later.[54] England has had one since 1897, and the idea had spread to numerous foreign countries before the Federal Employers' Liability Act was passed. Just why the promoters of that statute made no effort to follow the English model is not clear, but their failure to do so was a tragic mistake. President Roosevelt admitted as much in 1907, but the 1908 revision ignored the suggestion.[55] There were thirty-seven compensation acts in the states and territories when Mr. Justice Brandeis wrote, and Mississippi is now the only holdout. Thus, the interstate railroad employees, instead of being put at an advantage, are at a disadvantage as compared with most others, and they, their employers, the public, the legal profession and the administration of justice will all suffer until the disadvantage is removed.

OBSTACLES TO A FEDERAL ACT

Workmen's compensation for those now under the Federal Employers' Liability Act may be accomplished in one of two ways—by substituting for that statute a federal compensation act, or by repealing it and allowing the employees to come within the protection of the state compensation acts. The first alternative presents some formidable obstacles.

One of the most fruitful sources of F. E. L. A. litigation has been deciding who came under it. The first version was stricken down because it attempted to include all employees of interstate carriers, regardless of the nature of their work.[56] The 1908 act limited it to those actually employed in interstate commerce at the time of the injury. This clearly included the engineer on the New York-Chicago run, and excluded the head office stenographer, but it left the status of about everybody else on the railroad in doubt. No less than thirty-seven cases turning on this question were decided by the United States Supreme Court in its October, 1915, term.[57] A 1916 decision attempted to clarify it by use of the words "work so closely related to [interstate transportation] as to be practically a part of it."[58] Substitution of the word "transportation" for "commerce" added new confusion, and the tide of litigation continued. Lester P. Schroene and Frank Watson published in the *Harvard Law Review*[59] several pages of hair-splitting and side-splitting distinctions, the best one being that a man was protected (if that is the right word) by the Act when "wiping insulators that support wires that carry electricity that runs engines that propel cars that carry goods in interstate commerce."[60] One wonders what the court would have said about the "farmer that sowed the corn that fed the cock that crowed in the morn that woke the priest all shaven and shorn that married the man all tattered and torn that kissed the maiden all forlorn that milked the cow with the crumpled horn that tossed the dog that worried the cat that killed the rat that ate the malt that lay in the house that Jack built," the malt being assumed to be an interstate shipment in the original package.

A 1939 amendment attempted to end this confusion and broaden the Act by applying it to any employee "*any part* of whose duties as such employee shall be the furtherance of interstate or foreign commerce, or shall in any way directly or closely or substantially affect such commerce."[61] This does indeed broaden the base, but the words "directly or closely or substantially" still require judicial interpretation with respect to that essential interstate part of the work, and the cases continue to pile up.

This major drawback of the Federal Employers' Liability Act would at the best be carried

53. James H. Pope, "Selection of Jurors," 21 *Los Angeles Bar Bulletin* 10, 14 (Sep., 1945).
54. Wisconsin, Laws, 1911, c. 50.
55. 42 Cong. Rec. 73 (1907), quoted in Schroene and Watson, "Workmen's Compensation on Interstate Railways," 47 *Harvard Law Review* 389, 392 (1934).
56. Employers' Liability Cases, 207 U.S. 463 (1908).
57. Brandeis, J., *New York Central R. Co. v. Winfield*, 244 U.S. 147, 168, note.
58. *Shanks v. D.L. & W. R. Co.*, 239 U.S. 556 (1916).
59. 47 *Harvard Law Review* 389, 399-406 (1934).
60. *Southern Pacific v. Industrial Accident Comm.*, 257 U.S. 647 (1921).
61. Act of August 11, 1939.
62. *New York Central R. Co. v. Winfield*, 244 U.S. 149 (1916) holds the scope of the Federal Employers' Liability Act and workmen's compensation coextensive.

over into any federal workmen's compensation act, for the extent of the power of Congress would be the same in either case,[62] and the sensible thing to do would be phrase that portion of the compensation statute in the same words as the corresponding portion of the present Act, so as to retain the advantage of the great bulk of judicial construction already put upon it. That alone would not be a reason for not enacting a federal compensation act in place of the present law, since in that respect the situation would be no worse than now and in other respects would be better, but there is another more serious jurisdictional problem. The big question of the existence or non-existence of employee status, ordinarily decided by workmen's compensation commissions, would be a jurisdictional question upon which the power of Congress would depend in the case of a federal act. In 1932 the Supreme Court held in a case arising out of the Longshoremen's and Harbor Workers' Compensation Act that there was a right to a judicial trial *de novo* of this jurisdictional question,[63] and the same reasoning would apply to any federal compensation act. This would be a serious administrative defect.[64]

STATE COMPENSATION PREFERABLE

As for repeal of the Federal Employers' Liability Act and remission of the responsibility to the state workmen's compensation commissions, one last quotation from Mr. Justice Brandeis will be indulged:

"The subject of compensation for accidents in industry is one peculiarly appropriate for state legislation. There must, necessarily, be great diversity in the conditions of living and in the needs of the injured and of his dependents, according to whether they reside in one or the other of our states and territories so widely extended. In a large majority of instances they reside in the state in which the accident occurs. Though the principle that compensation should be made, or relief given, is of universal application, the great diversity of conditions in the different sections of the United States may, in a wise application of the principle, call for differences between the states in the amount and method of compensation, the periods in which payment shall be made, and the methods and means by which the funds shall be raised and distributed. The field of compensation for injuries appears to be one in which uniformity is *not* desirable, or at least not essential to the public welfare."[65]

Possible objections, constitutional and otherwise, to the return of this jurisdiction from Congress to the states, have been exhaustively considered and rejected by Schroene and Watson in the *Harvard Law Review* article previously mentioned,[66] to the concluding pages of which the reader is specifically referred. They surveyed the field to ascertain how injured employees would fare in the various states if the present act were repealed and found that one might anticipate:

"(1) In twenty-five states the immediate application of state workmen's compensation acts to injuries suffered while engaged in interstate commerce; (2) In thirteen states, prompt adoption of the slight amendments necessary to make the state compensation laws applicable; (3) In nine states the immediate application of employers' liability acts similar to the present federal act, together with the eventual probability of thorough-going workmen's compensation legislation; (4) In Virginia, the necessity of immediate legislative action of some sort to avoid reversion to common-law rules.[67]

This article is now twelve years old, and the changes that have taken place in the intervening time greatly improve the picture. Except for Mississippi, all the states under (3) and (4) now have workmen's compensation. Of those in (2), many, with the federal act in mind, were drafted to exclude interstate employees. The first legislative session would pass without protest a simple amendment to remove that restriction. Mississippi could be provided for to the same extent as at present by making the repeal of the federal act applicable only in states where compensation laws exist, leaving it in force in Mississippi.[5]

One major drawback to the substitution of workmen's compensation, either federal or state, for the present system, especially in the case of the more highly paid workmen, is the low scale of benefits paid. Maximum weekly benefits under these acts vary from $14.00 to $28.00, the average being around $20.00. This is not much more than unemployment compensation, which is not caused by an injury, and is scant comfort to a man with twenty years' seniority earning $60.00 to $100.00 a week. This factor has been chiefly responsible for the opposition

63. *Crowell v. Benson*, 285 U.S. 22 (1932).
64. Schroene and Watson, op. cit., pp. 423-4.
65. *New York Central R. Co. v. Winfield*, *supra*, pp. 168-9.
66. Pages 411-424.
67. Page 422.

to workmen's compensation repeatedly voiced by railroad employee groups. It might be supposed that the employees as a group would be willing to forego the remote chance, in case of a really bad injury due to negligence, of a whopping verdict (minus, of course, the lawyer's fee and what are often extravagant expenses involved in conducting a trial a thousand miles away) for the sake of definite assurance of modestly adequate care and compensation in case of any injury regardless of whose fault it might be. We have already mentioned, however, frequent cash settlements by the railroads even in clear non-liability cases, and one lawyer with wide experience in these cases has gone so far as to declare that the men can do just about as well with "nuisance value" settlements in non-liability cases as they could under state compensation. It hardly needs to be said that there is something wrong with a system that sets up a negligence standard for liability and then turns around and provides for the cases not involving negligence by regular reliance on "nuisance value" settlements from defendants not obligated by law to pay anything. It is hard to believe that this distinctly extra-legal procedure is able to provide as adequately for the whole group of injured employees as a good workmen's compensation law would, and the employees may sometime realize that they have been holding at too high a value their remote sweepstakes chance of a big jury verdict when and if a serious accident under the proper circumstances takes place.

SUGGESTIONS FOR ACTION

This subject has been often discussed before without results, and in the hope of avoiding such an outcome in this instance we venture to suggest some parties who ought to act, and why:

1. *The judiciary.* Judge Shaw's sound suggestion regarding change of venue in federal cases on the judge's own motion when in his discretion it is desirable to do so for the sake of justice should have the attention of the Judicial Conference. In spite of the precedent of *Union Pacific R. Co. v. Leet*, some state court ought to decline jurisdiction of an imported case on grounds of *forum non conveniens* or burden on interstate commerce (happily the war effort is now passing out of the picture), relying on the clear statement in the *Douglas* case and the true import of the *Miles* case, and force the United States Supreme Court either to abandon the position it took by denying certiorari in the *Leet* case, or to defend and justify it. If Congress can compel state courts to hear cases arising under federal laws, whether the exercise of the jurisdiction is convenient or inconvenient, just or unjust, then may we not conclude with equal logic that a state legislature could confer mandatory jurisdiction upon federal courts to hear cases arising under state law? The one proposition is just as sound as the other; who will rise to defend it?

2. *The bar.* There is a rich field for grievance committee action in the professional ethics angle of the traffic in damage suits. A few bar associations have tried to do something, and the setbacks they have had only emphasize the need for redoubled and combined efforts. That there is an element of self defense for the bar in this may be noted from the paragraphs already quoted from the *Chicago Bar Record.* The bar should further support venue and other legislation that may be aimed against these abuses, and should especially support workmen's compensation for railroad employees. This is a "bread and butter" project for lawyers, for the many lawyers and firms already practicing and specializing in workmen's compensation cases can testify to the opportunities for law practice which such cases afford. These opportunities would be available to the bar generally and could not be cornered by a few aggressive specialists.

3. *The railroad employers and employees* should get together and work out some mutually agreeable plan to provide adequate compensation for all injuries in place of the present one which gives an insignificant few with spectacular injuries a chance to get rich on a spectacular jury verdict, and leaves the considerable number who are injured through nobody's fault or in whose cases the fault cannot honestly be proven with no honest remedy of any kind. The employees should do some dollars-and-sense figuring as to the relative merits of a gamble for high stakes in certain cases and the certainty of reasonable compensation in all cases, and the employers should be willing to consent to whatever scale of workmen's compensation benefits is just and fair, even though that would mean an increase over present rates. If it were possible to work out a mutually satisfactory single schedule, it would be worth trying to get it

enacted into federal law in place of the Federal Employers' Liability Act, and the difficulties of defining the limits of federal jurisdiction in that case should not be allowed to interfere with such a move, since they would be no greater than under the present law. Otherwise, the two groups should join forces in support of the repeal of the federal act and the passage of whatever supplementary legislation is needed in certain states.[68]

68. For additional references see Vernon X. Miller, "Workmen's Compensation for Railroad Employees," 2 *Loyola Law Review* 138-162 (1944); J. P. Chamberlain, "Inroads upon Workmen's Compensation by the 1939 Amendment of the Federal Employers' Liability Act" (1943) obtainable from the Department of Labor, Washington; Theodore Schmidt, "What Should Be Done with the Federal Employers' Liability Act?" (1935), obtainable from Pennsylvania R. Co.; Roberts, *Federal Liabilities of Carriers,* 2nd. Ed. (1929); Horowitz, *Injury and Death under Workmen's Compensation Law* (1944).

Territorial Jurisdiction of Minor Courts

EDSON R. SUNDERLAND

"A satisfactory court should be open at convenient hours and at sufficiently frequent intervals to make it reasonably accessible to all persons having business to transact with it. It should be held in a court room reasonably well arranged for the purpose, and supplied with at least a few fundamental law books, and suitable facilities for making and keeping records. The office should carry a sufficient stipend to be attractive, and the judge should devote enough time to his judicial duties to acquire the skill and judgment which experience alone can give."

IN A LARGE NUMBER of states the justice of the peace is in many respects a township officer. This is true in Michigan. Although, while performing his judicial functions, he represents the state rather than his particular township,[1] and is vested with a part of the judicial power of the state,[2] he is frequently referred to in the statutes as a justice of a designated township.[3]

He is a township officer in respect to his election, for each organized township is required by the state constitution to elect not more than four justices of the peace.[4]

He is a township officer in respect to his residence, for if he shall remove beyond the township in which he was elected, or shall be placed without the same by a change of boundaries of the township, he shall be deemed to have vacated his office.[5]

He is a township officer in respect to the place in which he is authorized to hold court. The statute provides that "no justice of the peace shall hold court or try any cause, civil or criminal, in any other township or city than that in which he was elected and qualified, except in cases where special provision is otherwise made by law."[6]

He is essentially a township officer in respect to venue of civil actions, since the township is the unit employed in determining where actions shall be brought. Thus any particular justice of the peace may hear and determine only actions where one or more of the parties resides in the same township as the justice of in a township adjoining that of the justice.[7] But if a defendant shall have absconded from his residence, the action may be brought in any township in which he or his property may be, or when all the plaintiffs or the defendants be non-residents of the county, the actions may be brought in the township where such plaintiff or defendants or any of them may be.[8]

The author is secretary of the Judicial Council of Michigan and retired professor of law in the University of Michigan law school. This article is the second of a series adapted from a *Study of Justices of the Peace and other Minor Courts* published recently by the Judicial council of Michigan as part of its fifteenth annual report. See "Qualifications and Compensation of Minor Court Judges," 29 J. Am. Jud. Soc. 111 (December, 1945).

1. *Faulks v. People,* 39 Mich. 200.
2. *Holland v. Adams,* 269 Mich. 371, 257 N. W. 841.
3. Mich. C. L., 1929, Secs. 15988-9; Mich. Ann. St., Secs. 2.3188-9.
4. Art. VII, Sec. 15.
5. Art. VII, Sec. 19.
6. Mich. C. L., 1929, Sec. 15979; Mich. Ann. St., Sec. 27.3179.
7. Mich. C. L., 1929, Sec. 15988; Mich. Ann. St., Sec. 27.3188.

In case of the removal from office or the death of a justice of the peace his official dockets and papers are to be delivered to the township clerk for temporary custody.[9]

Where justices of the peace are elected in cities, the city takes the place of the township in respect to these various provisions.

THE TOWNSHIP AS A JUDICIAL UNIT

The township is not a proper unit for the efficient performance of any governmental functions. In the Northwest territory it was originally and primarily a surveyor's unit, under the ordinance of 1785, which provided that "The surveyors . . . shall proceed to divide the said territory into townships of six miles square." Having once acquired a name and a description as a geographical unit, the township naturally began to assume an institutional character, not because it was well adapted for governmental activities but because it furnished an existing basis for local municipal organization in a largely unorganized region.[10]

The township is a particularly inconvenient unit for judicial purposes.

This is primarily due to the fact that there is not ordinarily enough judicial business in a rural township to justify the maintenance of a court of any kind.

A satisfactory court should be open at convenient hours and at sufficiently frequent intervals to make it reasonably accessible to all persons having business to transact with it. It should be held in a courtroom reasonably well arranged for the purpose, and supplied with at least a few fundamental law books, and suitable facilities for making and keeping records. The office should carry a sufficient stipend to be attractive, and the judge should devote enough time to his judicial duties to acquire the skill and judgment which experience alone can give.

None of these requirements can be met in an ordinary rural township.

A survey of six typical and representative counties in Michigan made in 1932[11] showed that in their 75 rural townships, 1485 cases per year were disposed of by justices of the peace, which means an average of 20 cases per year per township. This is only about one and a half cases per month for each of the 75 townships.

A survey of Washtenaw county, Michigan, made by the writer in 1942 showed that from August 1, 1941, to August 1, 1942, in the twenty rural townships of that county, the township justices handled 101 civil cases and 252 criminal cases, or 353 cases in all, which amounts to less than 18 cases per year per township, or one and a half cases a month.

The absurdly small size of such dockets is shown by the fact that during the same one-year period in Washtenaw county, two part-time city justices in Ann Arbor disposed of 4711 cases. They have now been superseded by one municipal court judge who carries all the work formerly done by the two city justices. Assuming that this number of cases, namely, 4711 cases per year, represents a fair load for a regularly functioning one-judge court, each of the 20 rural townships produced judicial business averaging about 1/260 of a one-judge load.

It is obvious that no territorial area having so little judicial business as the average rural township can afford the expense of maintaining an adequate court room and properly equipping it. None of them in fact do so. And judges whose judicial experence is limited to an average docket of one or two cases per month are practically certain to be unsatisfactory as judicial officers.

In the 1932 study of Michigan justice courts, already referred to, the amazing want of judicial experience among the rural township justices was shown by the following figures:

Out of the 300 justices in the six counties, 21 did all the judicial business. Of these 21 justices:

Nine justices had never sworn a witness.

Two justices had sworn witnesses in only one case each.

Three justices had sworn witnesses in from three to five cases each.

Only two justices had had more than five witness cases.

Fifteen justices had never empanelled a jury.

One justice had used a jury in only one case.

ACCESSIBILITY OF MINOR COURTS

The establishment of minor courts within such small areas as townships has frequently been said to offer certain advantages which in part offset the disadvantages already referred to. Chief among these is the advantage of accessibility. With a justice of the peace in every

8. Mich. C. L., 1929, Sec. 15989; Mich. Ann. St., Sec. 27.319.

9. Mich. C. L, 1929, Secs. 16277, 16278; Mich. Ann. St., Secs. 27.3535, 27.3536.

10. *Local Constitutional History of the United States*, by George E. Howard (1889), p. 140.

11. 4th Rep., Mich. Jud. Council (1934), p. 172.

township, no one has far to travel when required to go to court as a party or witness. And in the enforcement of the criminal law warrants can be issued and bail can be taken in the neighborhood of the offense, without the delay, inconvenience or expense of an application to a more distant court.

But accessibility is no longer a mere question of distance. It may be easier to go ten miles to the county seat over good roads than to go two miles to a local justice over poor ones.

Furthermore, a court half way across the county, located in a public place on a business street, may be more accessible than a court nearer at hand located in an inconspicuous place which is hard to find. No court is very accessible to people who do not know where to find it, and most rural justices have so little judicial business that few people know who they are or where they hold court.

Again, the accessibility of a court may depend as much upon the probability of finding the judge as upon ease in finding his office. The longer and the more regular his office hours, the more readily available his services are likely to be. Hence a court with business enough to require regular sessions may be much more accessible than a court which is open only infrequently, even though the former is located at a greater distance.

It must also be borne in mind that the more important cases, even in the minor courts, are handled by lawyers, and their convenience is to be considered no less than the convenience of litigants and witnesses. All additional burdens placed upon the professional work of lawyers have to be paid for, in one way or another, by the public. Lawyers are not usually found in the rural townships, but tend to locate in the more populous centers. For them the township justices are likely to be the least accessible of tribunals.

It is in connection with traffic cases that the need for neighborhood magistrates has been most strongly urged. This is because many such cases involve summary arrest. Until a magistrate authorized to accept bail can be found, the person arrested will have to be held in custody. Hence, it is argued, there should be a justice of the peace available every few miles before whom the defendant can be quickly brought.

The argument overlooks the fact, already pointed out, that accessibility is not merely a matter of geographical distance, but of ease and convenience in locating and reaching the magistrate. Good roads, easily identified official quarters, and likelihood of finding the magistrate in his office, may be more important than the number of miles traveled.

This is the principle upon which the Michigan state police operate. Under date of Oct. 5, 1942, Oscar G. Olander, State Police Commissioner, wrote to the present writer:

> "In reply to your inquiry of Oct. 1 regarding our policy in the use of justices of the peace. . . We find that in every county there are a few active justices who maintain some kind of an office and who may be expected to be available most of the time. As you no doubt know, the majority of the justices are not active and cannot be readily located. It is therefore impractical to attempt to take misdemeanor cases before the nearest justices."

KNOWLEDGE OF LOCAL AFFAIRS

It has sometimes been urged that there is an advantage in having a local court serve a small enough area so that the judge and even the jurors will have a fairly intimate knowledge of local affairs. As an advisor and conciliator the judge might be more useful if well informed regarding local people and local events, but as an agency for the administration of justice both judge and jury are probably harmed rather than benefited by such knowledge. Questionnaires which have been circulated among lawyers show a widespread professional suspicion of this aspect of local courts.[12] It is a common belief among them that too many cases are decided on personal considerations rather than upon the evidence presented. A judge personally acquainted with the circumstances of the litigants is likely to be influenced in his decisions by prejudice and personal opinion rather than by the merits of the cases. Discrimination against non-residents of the locality is frequent. And local contacts too often lead to judicial action based upon personal and political expediency.

The suspicion which both the common and the civil law cast upon the action of judges who were too intimately acquainted with the persons and circumstances involved in cases brought before them, was pointed out by Judge Campbell in an early Michigan case. He said:

12. For example, the questionnaire prepared by the writer and distributed throughout the United States in 1941 by the Junior Bar Conference of the American Bar Association.

"Judges differ from all other public servants in having no representative duties. The judicial department . . . represents only the law by which the people have by their proper agents bound themselves. It cannot, therefore, in any of its duties, be said to serve any county or circuit or district. Its services are all performed on behalf of the state, as the sovereignty from which all the law emanates. . . By both the civil law and the English law, no judge was allowed to sit in his own home or county at all, to try civil or criminal cases. It is only during the present century that this restriction has been removed—so jealous was the law of any disturbing local influences which might warp justice."[13]

THE CITY OR VILLAGE AS A JUDICIAL UNIT

No minor court system for the state can be based entirely upon the city or village as a territorial unit of jurisdiction, because most of the area of the state, with a large part of the population, lies outside municipal boundaries. So far as such units are employed they are merely supplemental to other jurisdictional units. A municipal court, therefore, can be considered only an auxiliary court, which must be appraised not only for its effectiveness within the municipality but also for its capacity to serve as a useful and convenient element in a state-wide minor court system.

Viewing the municipal court merely as a local agency for meeting local municipal needs, the city or village may or may not be a suitable unit for jurisdictional purposes. It is likely to suffer from the same defects as an organized rural township. If it is small it will not produce enough judicial business to justify providing suitable compensation for the judge, an adequate court room and proper equipment in the form of necessary law books, means for keeping records and essential clerical service. Neither will it justify keeping the court open long enough and frequently enough to meet the convenience of the public and to enable the judge to acquire a reasonable amount of skill and experience in performing his judicial duties. A large city or village, on the other hand, may not be subject to these disadvantages.

Of the 450 incorporated municipalities in Michigan, 207, or 46 per cent, have less than 1,000 inhabitants; 306, or 68 per cent, have less than 2,000 inhabitants; 374, or 83 per cent, have less than 5,000 inhabitants, and 421, or 93 per cent, have less than 10,000 inhabitants. Three-quarters of all these communities have populations no greater than the average rural township. It is quite obvious that most of the municipalities of Michigan are entirely too small to constitute appropriate territorial units for the maintenance of minor courts. How large a population would be required to fully justify the organization and operation of such a local court cannot be determined very definitely because, on account of varying local conditions, the amount of judicial business may not always correspond to the population.

A minor court, like any other court, should have at least one full time judge and one full time clerk in order to operate most efficiently. Staffs employed for only part time usually mean irregular sessions and infrequent office hours, divided interest, insufficient judicial experience, makeshift court rooms, poorly kept records and loss of time and effort in shifting from one occupation to another.

Minor courts organized with minimum full time staffs of one judge and one clerk and usually exercising a civil jurisdiction up to $500, have been operating in a sufficient number of Michigan cities to indicate how large a community such a court could be expected to serve. Among these cities are the following:

		Court Personnel	
City	*Population*	*Judges*	*Clerks*
Benton Harbor ...	16,668	1	1
Ishpeming	9,491	1	1
Marquette	15,928	1	1
Menominee	10,230	1	1
		(not full time)	
Muskegon Heights.	16,047	1	1
River Rouge	17,008	1	1
		(small amount of time from one associate judge)	
Traverse City	14,455	1	1
Wyandotte	30,618	1	1

Larger communities have usually found it necessary to employ additional personnel, for example:

Ann Arbor	29,815	1	2
Battle Creek	43,453	2	1
Highland Park	50,810	1	5
Jackson	49,656	1	2
Pontiac	66,626	2	3
Saginaw	82,794	2	6

These figures seem to show that a full time minimum staff of one judge and one clerk can

13. *Royce v. Goodwin*, 22 Mich. 496, 499 (1871).

fully dispose of the judicial business in an urban community of from 10,000 to 20,000 people. If the community is smaller than this, neither the judge nor the clerk will be fully occupied with the business of the court.

If 10,000 is taken as the smallest population which can efficiently utilize the services of a minimum full time court, it will follow that only seven per cent of the municipalities of Michigan could be made to serve effectively as jurisdictional units, and that 93 per cent have too small a population to serve as suitable territorial units for a minor court. This is 42 per cent of the total population of the state.

Accordingly, it seems clear that the city or village is a suitable jurisdictional unit for only a comparatively few populous areas in the state. Throughout the remaining territory within the state boundaries, which constitutes more than 98 per cent of the total area of the state, municipal courts are impractical or impossible. This territory is now served largely by justices of the peace. To provide it with minor courts comparable with the courts of the more populous municipalities, some type of jurisdictional unit larger than the township, village or city must be employed. The county at once suggests itself as a suitable unit for the purpose.

THE COUNTY AS A TERRITORIAL UNIT

There are two limitations upon the size of the area which a minor court can effectively serve.

1. It should not be so small that the amount of business coming before the court is insufficient to justify proper court organization and court room equipment and adequate hours. The rural townships and 93 per cent of the incorporated cities and villages in Michigan have already been shown to be too small to meet this test.

2. It should not be so large as to impose an unreasonable burden of travel upon those who are required to attend its sessions or otherwise make use of its facilities. This is the only ground upon which a maximum territorial limit can be predicated, since an indefinitely large amount of business in a given area can always be taken care of by merely increasing the number of judges and clerks.

Is the ordinary county too large to meet this test?

The counties in Michigan, like those in most mid-western states, are remarkably uniform in size. The average Michigan county has about twenty standard townships, each six miles square, which give it an area about 24 miles by 30 miles. Nearly half the counties measure 24 miles by 24 miles. All of these counties were laid out long ago with a view to bringing all county residents within convenient horse-and-wagon distance of the county seat. Automobiles and improved roads have had the effect of shrinking distances in terms of effort in traveling, to probably less than one-sixth the distances originally contemplated.

The county has actually proved to be a very convenient unit for various governmental activities, including the administration of justice.

The Michigan justice of the peace in fact operates jurisdictionally as a county court when engaged in administering the criminal law. The statute provides that "any justice of the peace is empowered and authorized to perform all official acts and duties and to exercise jurisdiction in criminal causes in any township or city situated in the county within which the justice of the peace was elected and qualified, with the same rights and powers as though performed and exercised within the city or township in which such justice of the peace was elected and qualified."[14] This plan has been satisfactory. But at the same time, in dealing with civil actions, the justice is in effect a township officer under the venue statutes applicable to such cases.[15]

The enforcement of the state criminal laws is in effect a county function assigned to the county prosecutor, and the maintenance of the peace is in the hands of another county officer, the sheriff. Persons having business with these officers must ordinarily deal with them at the county seat.

Almost half of the circuit courts of Michigan are in effect county courts, and function in a single county. The remainder are in circuits consisting of two or more counties. The county is here the minimum, not the maximum unit, and there has never been any complaint that any county is too large to suit the convenience of the parties, witnesses, jurors and lawyers who are required to attend court.

The probate courts in Michigan are all county

14. Mich. C. L., 1929, Sec. 17120; Mich. St. Ann., Sec. 28.845.

15. See *supra*, p. 147.

courts so far as their jurisdiction is concerned, and counties have always been considered satisfactory units within which to exercise this jurisdiction.

Many important records affecting the entire county are kept at the county seat, such as real estate transfers and records of births, deaths and marriages. In general all the business of the county relating to finances, highways, public health, education and other matters of county concern, is carried on at the county seat by county officers located there.

One matter has been frequently stressed as an advantage in the system of township justices, who are scattered in numerous places throughout the county, and that is the convenience of arresting officers in connection with the issuance of warrants and provision for bail. This is chiefly a motor traffic problem, and will be considered in discussing the adaptability of a county-wide minor court system for dealing with violations of the traffic laws.[16]

The burden of traveling to the county seat in connection with these various county matters has never been seriously suggested as a reason for reducing the size of the county as a governmental unit. On the contrary, it has been urged that counties with sparse populations would often function more efficiently and economically if enlarged by consolidation.[17]

But it is not at all necessary that a county court sit exclusively at the county seat or at any other one place. Its location is purely a matter of general convenience. It should ordinarily sit where the bulk of the business arises, and if there are several important centers of population in the county it might very well sit in each of them. Two or more such places might be served by the same judge, sitting in each of them on different days. This would merely apply to the county the principle of the circuit system, which was used for centuries by the higher courts in England and has always been employed to a greater or less degree in the United States. Under the present civil county court system in England, which has been a great success, sixty county court judges hold court in four hundred places, each place being visited at least once a month. Some judges hold court in a dozen or more towns.[18]

If the county were made the normal jurisdictional unit for a minor court system, the places where the court would actually sit would probably differ very little from the places in which the great bulk of the minor litigation is now carried on. In spite of the presence of justices of the peace in every township, most of them handle no cases whatever, and the business is actually concentrated in so few places in the county that a county judge could easily take it over without substantially changing the places of holding court.

In the study of six typical Michigan counties already referred to regarding the judicial business done by justices of the peace outside the cities, it appeared that in Cass County four justices out of sixty did all the business and one did 70 per cent of it; in Iron and Roscommon counties one justice did all the business; in Antrim County three justices out of sixty did all the business; in Luce County two justices out of sixteen did all the business, and one did 81 per cent of it; and in Kent County five justices did 88 per cent of all the business, while 87 justices had no cases whatever.

THE VIRGINIA TRIAL JUSTICE SYSTEM

Under the Virginia trial justice system, one trial justice is appointed in each of the 97 counties in the state to exercise the jurisdiction of the justices of the peace. He is required to sit at the county seat and at such other places in the county as shall be prescribed by the circuit judge.[19] Judge J. Callaway Brown, of Bedford, president of the Trial Justices' Association, stated to the present writer in September, 1940, that at first there was considerable demand from other localities in the counties for sessions to be held there, but this demand had substantially diminished. A tabulation made by the secretary of the Virginia Trial Justices' Association showed that in forty counties the court sat exclusively at the county seat. In other counties sessions were held in two, three or more places outside the county seat when the amount of judicial business made such sessions convenient and economical. In some instances one trial justice served two counties, as expressly permitted by the statute where the

16. See Fifteenth Annual Report, Judicial Council of Michigan, p. 114 (1945). This will be taken up in a later article in this series entitled "Organization of Minor Courts."

17. *Organization and Cost of County and Township Government*, by Arthur W. Bromage and Thomas H. Reed (Mich. Local Govt. Series), pp. 73-78.

18. Jackson, *The Machinery of Justice in England*, p. 25.

19. Va Code, 1942, Sec. 4987h.

boards of supervisors consented.[20] Places of holding court are arranged entirely on the basis of convenience under rules providing for complete flexibility.

The amount of traveling required on the part of Virginia trial justices in holding court at places other than the county seat is not great. Thirty-one trial justices who held court in more than three places were averaging in 1940 only 298 miles of travel per month.[21]

The circuit judge in each of ten Michigan circuits holds court at the county seats of two different counties, in six circuits he holds court in three different counties, in four circuits he holds court in four different counties, and in two circuits he holds court in five and six different counties respectively. No judge of a county court, even though he were to hold court in every important center of population in the county, could be required to do more traveling than some of these circuit judges.

It would seem to follow from the foregoing considerations that a minor court having a county-wide jurisdiction would be able to operate more efficiently than a group of courts each restricted to a smaller geographical area, and that by holding sessions in different populated centers in any county where the judicial business might justify or require such sessions, the entire county could be conveniently served.

Two or more counties might even be combined into a single minor court district, where the population is very sparse and the amount of business is very small. The choice would be between a well organized court serving a large territory and an inadequate court serving a smaller one.

With the county as a territorial unit for the operation of a minor court, the complicated and confusing venue regulations of the justices' courts, based upon township and city boundaries,[22] would become obsolete and the simple and well-understood system of venue employed by the circuit courts[23] could be made applicable to actions in the county courts.

The state of Virginia furnishes the most notable modern example of the supersession of the system of justices of the peace by a county court system.[24] The statute provides that "for every county, including all incorporated towns therein . . . there shall be appointed for a term of four years, by the circuit court for said county, or the judge thereof in vacation, a trial justice . . ."[25] In certain counties an associate trial justice may be appointed on request of the board of supervisors[26] and in each county a substitute trial justice shall be appointed.[27] "Two or more counties may, with the approval of the boards of supervisors of said counties, in the discretion of the judge or judges of the circuit courts for such counties, be combined and one trial justice and one substitute trial justice be appointed for the two or more counties so combined by the judge or judges aforesaid. . . . Any city within any county may be combined with such county and one or more other counties combined as herein provided . . ."[28]

Salaries of trial justices are to be fixed by a committee of three circuit judges appointed by the governor, within the limits prescribed by the statute, as follows:[29]

Population of County	*Salary*
5,000 or less	$ 700—$1,000
5,000—10,000	900— 1,800
10,000—25,000	1,000— 3,000
25,000—30,000	1,500— 3,500
35,000—40,000	2,000— 4,000
40,000—50,000	2,000— 4,500
More than 50,000	3,000— 5,000

These salaries, as well as the salaries of clerks and assistants are paid out of the state treasury,[30] from funds collected by the trial justices.

The trial justice has exclusive original jurisdiction throughout the county or counties, including towns therein, and any city or cities, for which he is appointed trial justice, of all offenses against the ordinances, laws and by-laws of the respective counties, cities and towns, and of all misdemeanors with certain exceptions and of fall claims to specific personal property, debts, fines or other money, to damages for breach of contract or injury done to property,

20. *Ibid.*, Sec. 4987c.
21. Statistics compiled by W. Francis Binford, secretary, Association of Trial Justices of Virginia.
22. Mich. C. L., Mason's 1940 Supp., Sec. 15988; Mich. Stats. Ann., Sec. 27.3188.
23. Mich. C. L. 1929, Sec. 13997; Mich. Stats. Ann., Sec. 27.641.
24. Ch. 385, Va. Acts, 1936; as subsequently amended, Va. Code, 1942, Secs. 4987a-p.
25. Va. Code, 1942, Sec. 4987a.
26. *Id.*
27. *Ibid.*, Sec. 4987b.
28. *Ibid.*, Sec. 4987c.
29. *Ibid.*, Sec. 4987e.
30. *Id.*

real or personal or injury to the person, when the omount of such claim does not exceed $200, and concurrent jurisdiction with the circuit court where such amount exceeds $200 but does not exceed $1,000. And all civil cases, where the claim exceeds $200, shall be removed by the trial justice to the circuit court upon the filing by the defendant of an affidavit that he has a subsantial defense to the plaintiff's claim. The trial justice also has power to conduct preliminary examinations of persons charged with crime.[31]

The venue of actions brought before the trial justices in Virginia is in general the same as that in circuit court actions.[32]

The office of justice of the peace was not disturbed, but the law provides that "no justice of the peace or mayor shall, within any county or in any incorporated town located therein, or in any city for which a trial justice has been appointed, exercise any civil or criminal jurisdiction herein conferred on such trial justice," but justices and mayors are nevertheless given the same power as trial justices to issue attachments, warrants and subpoenas and also to grant bail, and to receive their fees therefor, "but said attachments, warrants and subpoenas shall be *returnable before the trial justice* for action thereon." Any officer making an arrest shall on request of the person arrested, take him promptly before the nearest available justice of the peace or other officer authorized to grant bail.[33].

"The trial justice shall sit for the trial of criminal and civil matters and cases at the county seat of the county, and at the town or city hall of the city for which he shall have been appointed," or at such other places as the city council may provide in the city or as the circuit court shall designate in the county. Any matter may be removed for hearing, in the discretion of the trial justice, from any one of such designated places to any other one, to serve the convenience of parties or expedite the administration of justice.[34]

Statutory costs for services rendered by the trial justice and his clerk, and fines collected in state cases, are paid into the state treasury, and fines collected in ordinance cases are paid to the city, town or county whose ordinance has been violated.[35]

The total cost of operating the trial court system in the state is more than covered by the revenue received from its operation. In 1939 the total revenue from the trial justices amounted to $442,517.56, while the total expense of operating the system was $231,877.15.[36]

THE MUNICIPAL COURT IN A STATE-WIDE MINOR COURT SYSTEM

Where a municipal court has already been established in a county, there are obvious disadvantages in organizing an additional court to exercise jurisdiction in the remaining portion of the county, outside the municipal boundaries.

The outside territory alone would seldom produce enough business to warrant the maintenance of an adequate court. By combining both urban and rural portions of the county within the jurisdiction of a single court, the entire county would enjoy the benefit of a better court, resulting from the enlarged volume of business.

The question would then arise, whether the existing municipal courts should be given county-wide jurisdiction so as to enable them to function as county courts, or whether the municipal courts should be abolished and a new system of county courts should be established in their place.

If a municipal court is already organized in such a way as to meet the requirements of an adequate county court, there would seem to be no occasion to disturb it. By merely extending its jurisdiction over the entire county and making minor adjustments in its organization to bring it into harmony with the general county court standards, it could easily be made an integral part of the state-wide county court system.

It might even be permissible to organize new municipal courts in cities desiring to have them, in accordance with established county court standards, which would thereupon operate as units of the county court system. This would enable a city to obtain better court facilities for its own residents and incidentally for the other inhabitants of the county, where the

31. *Ibid.*, Sec. 4987f-1.
32. *Ibid.*, Sec. 4987-2 (trial justices); Secs. 6049-6056 (general).
33. *Ibid.*, Sec. 4987f-5.
34. *Ibid.*, Sec. 4987h.
35. *Ibid.*, Sec. 4987m.
36. Report on audits of accounts of trial justices of Virginia for year end June 30, 1939, by auditor of public accounts, pp. 31 and 29.

county was unwilling to undertake the organization of a county court.

There is no constitutional objection to a court functioning both as a city court and as a state court. It was so held in *Attorney General v. City Election Commission,* 202 Mich. 626, 168 N. W. 708 (1918), where the court said:

"In *Murtha v. Lindsay,* 187 Mich. 79, the following language was used: 'The recorder's court is, when exercising jurisdiction to try persons accused of crimes, under the general laws of the state, a state court: its judges exercise the powers of a circuit judge.'

"The jurisdiction of the recorder's court, however, is not limited to the enforcement of the general laws of the state. In the 1904 charter at page 203, is found the following: 'Said recorder's court shall have exclusive cognizance of all prosecutions for offenses arising under this act or any ordinance or regulation of the common council.'

"It is evident the jurisdiction of the recorder's court is of a dual character. We think it logical to say that when it is exercising jurisdiction given to it exclusively, to enforce ordinances of the city, that it is a city court."

In *People v. Steiner,* 236 Mich. 618, 211 N. W. 30 (1926), it was held that the justice's court of the city of Muskegon was a city court in dealing with ordinance cases, but was more than a city court "because the jurisdiction in some cases reaches beyond the city limits."

Municipal courts with county-wide civil and criminal jurisdiction are found in a number of states, and answers to questionnaires sent by the present writer to lawyers in those states indicate general satisfaction with their operation. States which employ this system generally, include Arkansas,[37] Georgia,[38] Iowa,[39] Minnesota,[40] South Dakota,[41] Utah,[42] and Vermont;[43] and in a number of others, such as Kansas, New York, and Wisconsin, the courts in certain cities, according to information received from local lawyers, exercise a county-wide jurisdition.

37. Ark. Stats., 1937, Sec. 9905.
38. Ga. Code, note preceding Ch. 24-22.
39. Ia. Code, 1939, Sec. 10657.
40. Minn. Mason's Stats., 1927, Sec. 218.
41. S. D. Code, 1939, Sec. 32.0912.
42. Utah Code, 1943, Secs. 20-4-12, 20-4-14.
43. Vermont P. L., 1933, Sec. 1403.

Proposed Wisconsin and Massachusetts Bar Rules Published

Full texts of proposed rules and by-laws for the organization and government of the bar were published in the November issues of the state bar journals of Massachusetts and Wisconsin.

The Wisconsin draft was prepared under the joint direction of the committees on organization of the bar and integration of the bar, approved by them on November 3, submitted to and approved by the board of governors of the state bar association on November 24, and is now submitted to the lawyers of the state through the bar journal. Every lawyer will be given an opportunity to vote for the rules or to signify his dissent. Publication of the Massachusetts proposed rules and by-laws is in furtherance of a mandate of the last annual meeting of the state bar association, which, after a half-day's discussion, voted to submit them to local associations throughout the commonwealth for study and discussion prior to the next annual meeting.

A comparison of the two drafts is interesting and instructive. The Wisconsin draft begins with a statute already passed by the legislature creating the "State Bar of Wisconsin," and directing that the supreme court by appropriate orders provide for its organization and government. The Massachusetts plan does not contemplate an act of the legislature, but begins with a special rule to be established by the Supreme Judicial Court creating the "Bar of Massachusets." The entire Wisconsin draft consists of rules of court, and it is provided that the board of governors shall have power to adopt by-laws not inconsistent with them. Creation of committees and defining their duties and functions are elsewhere mentioned as one proper subject-matter for by-laws. The Massachusetts draft, although about the same length and covering about the same ground, contains only five court rules, the special one creating the integrated bar and four numbered ones dealing with membership, classes of membership, practice of law and membership dues. The remainder of the text consists of by-laws, which may be amended

by the members at any meeting on notice previously given, or by the council subject to possible rejection at the next members' meeting. The last section of the Wisconsin text provides that the members by majority vote at an annual meeting may "recommend" to the court amendments or additions to the rules. The net effect is about the same, for the court will doubtless accede to such recommendations, but the Massachusetts draft actually lodges in the members of the bar full authority over a great many subjects which the Wisconsin plan puts into rules of court, and as to which the bar can only make recommendations.

Each provides that those persons licensed to practice law on a certain date and subsequently admitted shall constitute the membership of the organization. Wisconsin provides for two classes of members: active and inactive; Massachusetts adds a third: honorary. They contain parallel sections forbidding any persons other than state bar members from practicing law, except in individual cases by special permission of court.

Wisconsin state bar dues would be set at six dollars a year for active members, three dollars a year for inactive members, and none for members in military service. The Massachusetts plan proposes that dues be set by the Council, subject to a maximum of ten dollars a year, and none for inactive or honorary members.

The governing body of the Bar of Massachusetts would be known as the Council, and would consist of forty members chosen in designated numbers from designated counties and groups of counties. The corresponding body in the Wisconsin organization is to be known as the board of governors, and is to consist of one member from each state judicial circuit as now or hereafter constituted. The Massachusetts council members would hold office for one three-year term and not be eligible for reelection; the Wisconsin members would have a two-year term and nothing is said about eligibility for reelection. Detailed election procedure is set out in each case. Nominations in Massachusetts are to be by a nominating committee, and in Wisconsin by petition. The executive committee, to exercise the board's or council's powers between sessions, in Massachusetts is to be composed of nine members appointed by the president; in Wisconsin, eight members selected by the board.

Massachusetts officers are to be president, secretary, treasurer, and council members, but no vice-president. The Wisconsin plan provides for a vice-president who shall automatically succeed to the presidency the following year. By requiring a report by the treasurer to the secretary the Massachusetts plan impliedly contemplates that those two offices shall be separate; the Wisconsin plan provides for secretary and treasurer and executive secretary, but makes it possible for one person to fill all three positions. The clerk of the Wisconsin supreme court is to be *ex officio* assistant secretary of the state bar, charged with the custody of certain records. The Wisconsin board of governors is to nominate officers, and ballots are to be mailed to the members prior to the annual meeting. The election is to be held on the last day of the meeting, and ballots may be cast in person or mailed to the secretary by persons not attending the meeting. Other nominations may be made by petition. There is to be no election of president, as the vice-president is to succeed to the presidency automatically. The Massachusetts officers are not to be elected by the members, but chosen by the council. The president is restricted to three one-year terms.

Each association is to have an annual meeting at a time and place set by the governing board, which also has power to call special meetings. Special meetings may likewise be called by the secretary upon petition of one hundred members in Wisconsin and eighty in Massachusetts.

The Massachusetts by-laws proved that upon vote of the Council or the members at an annual meeting, a referendum may be taken upon any matter affecting the administration of justice of the policy of the bar of Massachusetts, and no opinion or policy shall be announced as that of the bar of Massachusetts except upon such referendum or upon vote of the members at a meeting the notice of which shall have announced the subject to be voted on.

The Massachusetts draft provides for the appointment by the president of the following standing committees, the duties of which are outlined: administration of justice, admission to the bar, amendment of the law, budget and finance, continuing education of the bar, cooperation, criminal law, grievances, quarters, judicial appointments, junior bar, bar associa-

tions and societies, Massachusetts Bar Journal, meetings, publicity and public relations, and unauthorized practice of law. The Wisconsin rules provide for appointment by the president of such committees as may be provided for in the by-laws or created by the board of governors, which is to prescribe the functions and duties of all committees.

The Wisconsin rules provide in detail for the organization of grievance committees in each judicial circuit to investigate and hear complaints against members in such circuits, and for their procedure in the handling of complaints. No corresponding provisions are found in the Massachusetts draft. The duties of the grievance committee are declared to be "the usual functions of a grievance committee."

One of the proposed Wisconsin rules adopts the "present" canons of professional ethics of the American Bar Association as the ethical standards of the profession in that state, plus any from time to time announced or approved by the supreme court of the state. This does not contemplate the automatic adoption of future amendments to the American Bar Association canons, and it must be assumed that the supreme court will take cognizance of such amendments as are made from time to time and promulgate them separately for Wisconsin if they meet with the court's approval.

With half of the state bar organizations already operating under rules comparable to these, some for a good many years, the Massachusetts and Wisconsin draftsmen had a respectable body of experience to draw from. A great deal of painstaking work went into the drafting of these rules, by some of the best lawyers in each state, and whether or not they are ever put into practice they are of interest as representing the latest and presumably the best there is in integrated bar rules. Although there are a few minor and inevitable differences, they are remarkably alike, and there can be no doubt that each of them offers to its state a well-planned, practical, democratic structure which cannot fail to increase the responsibility, authority and usefulness of the organized bar.

Bar Secretaries Start New Publication

The first of a series of monthly news letters to be sent to state and metropolitan bar association secretaries throughout the United States made its appearance in January as a project of the Committee of Association Secretaries of the Section of Bar Activities of the American Bar Association. It is an outgrowth of a recommendation made at the bar secretaries' luncheon at Cincinnati last December 16. The new periodical states its objects and purposes as follows:

"1. To keep you and your association promptly advised of American Bar Association plans and activities of general interest to the bar, that you may shape your own programs accordingly;

"2. To keep you in touch with what other state and metropolitan bar associations are doing, as a continuing source of new ideas for your own association;

"3. To develop a clearing house where bar association secretaries may exchange views and experiences on specific problems you may wish to have discused; and

"4. To foster closer personal contacts among the working bar association secretaries of the United States."

Minnesota Bar Wins 1945 Award of Merit

The 1945 awards of merit of the Section of Bar Activities of the American Bar Association were awarded to the Minnesota State Bar Association, the Cleveland Bar Association, and the Cumberland County Bar Association of North Carolina. Recognition was given to the Minnesota group on the basis of outstanding work in public relations and postwar legal problems, as well as numerous other commendable activities. The Cleveland award was in recognition of valuable work toward selection of better judges in Ohio and improvement of the operation of the Cleveland municipal court. The outstanding accomplishment of the Cumberland County association was its legal aid clinic at Fort Bragg.

Notes from Exchanges

An interesting fact is that the total judicial service of the seven members of the court [the Supreme Court of Ohio] has now reached the impressive sum of 140 years—an average of 20 years per member. A total of 56 years of this service was rendered on the lower courts and 84 years on the supreme court.—*Ohio State Bar Association Report.*

The first issue of *The Detroit Lawyer*, new official monthly publication of the Detroit Bar

Association, appeared in January. By order of the Board of Directors, *The Detroit Lawyer* replaces the former *Detroit Bar Quarterly*, which, for thirteen years, served the membership admirably within the natural limitations of a quarterly publication. The new publication will be issued ten months in the year. There will be no issues in the months of August and September.—*The Detroit Lawyer.*

The Wisconsin Board of Juvenile Judges was created at an initial meeting held at the Schroeder Hotel in Milwaukee last September. Judge A. M. Scheller of Waupaca was elected president; Judge W. C. O'Connell of Beaver Dam was made vice-president and Judge F. H. Schlicting of Sheboygan was elected secretary and treasurer.—*Wisconsin State Bar Bulletin.*

The mid-winter conference of bar delegates was held at the George Washington Hotel in Jacksonville, Florida, on December 15. The conference authorized the president to appoint a new committee to deal especially with the question of bar integration. A proposal was made that the bar undertake the filing of a petition with the supreme court for the integration of the bar of Florida by court rule.—*Florida Law Journal.*

The Reader's Viewpoint

Admission to Practice Before Agencies

To the Editor:

One of my pet "gripes" is the requirement of various federal agencies that before an attorney may represent anyone before one of them he must be admitted to practice even though he is admitted to practice in the federal courts. Because of this I think that many lawyers refuse to be bothered with such matters. I believe the requirement is perhaps established so that the agencies will not have to bother with lawyers, and certainly it works a hardship upon those clients who would like representation. Veterans' Administration cases usually are charity cases; moreover, it is my experience that many doing business with that agency cannot understand an ordinary business letter and consequently are in real need of assistance. I am admitted to practice before that agency.

OLIVER W. MARVIN.

New Castle, N. H.

The House of Delegates

To the Editor:

I have been looking over your JOURNAL for December, 1945, and notice in the article on page 123 concerning the House of Delegates that the statement is made that expenses of the delegates to the *meetings* are paid by the Association. This statement is not correct. The only constitutional provision for payment of expenses relates to meetings of state delegates at the time nominations are made. Section 1 of Article VIII of the constitution provides that "the traveling and other necessary expenses incurred in the continental United States by state delegates in attendance at the meeting provided for in this section shall be paid by the Association." As a practical matter, the expenses of other delegates, to the extent of railroad fare (round trip) and pullman, lower berth, have been paid in connection with *mid-year* meetings of the House. No expenses of any kind to anybody are paid in connection with the annual meetings.

I am also inclined to think that Paragraph 2, first column, page 124, does not make clear our procedure on resolutions. See Article IV, Section 2, constitution, particularly lines 20-31, inc.

OLIVE G. RICKER,
Executive Secretary, American Bar Association.

Chicago, Ill.

Editor's Note: The paragraph referred to stated that one of the duties of the American Bar Association's assembly is the consideration of resolutions. The lines cited from the Association's constitution provide that after the assembly has voted on a resolution—

"The president shall thereupon report to the House of Delegates such resolution adopted by the Assembly for action by the House of Delegates. The House of Delegates shall thereupon approve, disapprove or modify such resolution; and its chairman shall report its action thereon

to the Assembly at or before its open session on the last day of the annual meeting, with a statement of reasons in case of disapproval or modification. In case of any such disapproval or modification, the Assembly may direct a referendum to the membership of the Association upon its original or modified resolution, to be conducted by the Board of Elections."

Suggestion to Bar Associations

To the President of the Kansas State Bar Association:

I have been quite impressed with the prize-winning essay in the *American Bar Association Journal* entitled "The Citizen as a Juror." This is also printed in the December issue of the JOURNAL OF THE AMERICAN JUDICATURE SOCIETY. I think this is a splended statement concerning the duties and obligations of a citizen. It has occurred to me that a bar association could do a great public service if it would:

1. Print this statement in its journal and endeavor to prevail upon all state publications, including magazines and newspapers, to reprint it.

2. Have larger, suitably drafted and framed placards of this article hung in an appropriate place in the rooms of the various trial courts, or perhaps even in the jury chambers.

3. In addition, have small post card size reprints of this statement prepared and placed in the hands of the clerks of the various courts for mailing to prospective jurors.

4. Give consideration to prevailing upon the various trial courts to make use of this language in somewhat of a standard instruction to be given in all jury cases.

ROBERT M. CLARK.

Topeka, Kansas.

The Literature of Judicial Administration

BOOKS

Studying Law, edited by Arthur T. Vanderbilt. Compilation of writings by authors named below. New York: Washington Square Publishing Corp., 1945. Cloth, pp. viii and 753. $4.75 postpaid.

Few boys grow to manhood without many trips to the grocery store and many consultations with doctors. If a young man decides to go into the grocery business or to become a physician, he does so with a fairly clear idea of what is involved, what will be required of him, and what it is likely to lead to. The legal profession is different. A great many people never come in contact with lawyers or the courts at all, and the whole legal world is a mystery to them. Young men from such families may and often do for legitimate reasons decide to become lawyers, and they may turn out to be good ones, but they are handicapped at the start by a lack of understanding not only of the law but of methods of studying law and the legal profession.

This handicap has been recognized, and numerous books are available to aid the prospective law student in becoming oriented. Law schools and libraries have reading lists for such persons. There has now been made available to them as well as to many others who will be equally interested, a single volume containing everything needed for a well-rounded introduction to the study of law. It is a compilation of writings by a number of authors, including the editor, dean of New York University law school.

The book opens with "The Young Lawyer and His Beginnings," by Albert J. Beveridge, forty-four pages of such practical advice to young lawyers as to avoid drinking coffee and to go to bed early and work in the early morning hours. Then follows "The Five Ages of the Bench and Bar of England," by John Maxcy Zane, and "Elements of Law" by Professor Munroe Smith. The two together describe the common law in its home environment and place it in perspective with the other great legal systems of the world. Roscoe Pound's "Introduction to American Law" brings us closer home in historical background. The same author's "Survey of Social Interests," and Arthur L. Goodhart's "Determining the Ratio Decidendi of a Case" narrow the study down to judicial processes, and legal mechanics are further explored in Pound's "Interpretation of Statutes," Eugene Wambaugh's "How to Use Decisions and Statutes," and Dean Wigmore's "Jury Trial Rules of Evidence in the Next

Century." Then the editor inserts his own excellent study of prelegal education recently prepared for the American Bar Association, and finally another American Bar Association report by Charles B. Stephens on "Finding Your Place in the Legal Profession."

Every law student who has not already assimilated from one source or another the materials here assembled should read this book as a part of his legal education. Every returning veteran contemplating the study of law, as well as every prospective law student from civilian life should read it before making up his mind. It is not enough to recommend it to individual users; law schools should take the initiative in placing it in the hands of students and prospective students, and liberal arts colleges where pre-legal courses are taught should see that it is carefully read by every pre-legal student.

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